

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

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SANDRA K MARKHAM, CLERK

BY: *Jaqueline Karchman*

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE WARREN R. DARROW
 TELEPHONIC STATUS CONFERENCE

JANUARY 5, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant) Case No 1 CA-CR 11-0895
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25 MINA G. HUNT
AZ CR NO 50619
CA CSR NO. 8335

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1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Wednesday,
3 January 5, 2011, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

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15 (Appearing by telephone.)
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1 P R O C E E D I N G S

2 THE COURT: Good morning. We'll go on the
3 record. V1300CR201080049, State versus James
4 Arthur Ray. Appearing telephonically is Mr. Li.

5 And you're present, Mr. Li?

6 MR. LI: Yes, Your Honor. Good morning, and
7 happy new year.

8 THE COURT: Thank you. Same to you.

9 Mr. Li, is Mr. Ray waiving his appearance
10 for this status conference?

11 MR. LI: Yes, Your Honor.

12 THE COURT: And then appearing for the state
13 is Mr. Hughes. Good morning. And also Pam Moreton
14 is listening in as well.

15 MR. HUGHES: Good morning, Your Honor. That's
16 correct.

17 THE COURT: One thing I wanted to talk about
18 was a request for clarification on a ruling with
19 regard to disclosure for experts. I wanted to talk
20 about that a minute. I didn't want any further
21 briefing or anything like that. So I'd ask that we
22 discuss that this morning then a bit about jury
23 questionnaires and then anything else the parties
24 want to talk about just for purposes of case
25 management with trial coming up now middle of

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1 February.

2 So I'll ask Mr. Hughes and Mr. Li first
3 if there is just anything that you think needs to
4 be addressed in terms of management, any problems
5 that you want to call to my attention?

6 MR. HUGHES: Your Honor, this is Bill Hughes.
7 The only other issue other than what you've brought
8 up that I think is probably maybe beating a dead
9 horse at this point. But if there is any way to do
10 the trial in a Prescott courtroom, I know the state
11 would be very interested in doing that, in
12 particular from a witness management.

13 We're going to be bringing a lot of
14 witnesses in, and we'd hate to have them bumping
15 into each other in the same limited number of hotel
16 rooms over in the Verde Valley/Camp Verde area.

17 Not to mention, I guess, my own bias,
18 which is I would hate to make that drive across the
19 hill every day. And I know that the Court was
20 looking for alternative space to do that. And I
21 don't know if there is anything has opened up since
22 then. But I was hoping to find out if maybe there
23 is some luck on that regard.

24 THE COURT: Mr. Li, that was the defense
25 preference months ago as well, as I recall.

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1 MR. LI: Yes, Your Honor. And for whatever
2 it's worth, and obviously the Court's and the
3 county's -- you know -- own logistical issues take
4 precedence over ours. But we are going to likely,
5 the defense team -- instead of doing a hotel, which
6 I think will be rather expensive, may rent a local
7 house. And we need to probably -- you know -- put
8 some money down fairly soon in terms of where
9 and -- in order to secure a location for the
10 pendency of the trial.

11 So to the extent that any decision can be
12 made, we'd appreciate it, Your Honor, if it could
13 be done as quickly as possible.

14 THE COURT: And I have expressed my view. I
15 would have no problem with conducting a trial in
16 Prescott. I mean, my staff is here, of course, and
17 there are those concerns. And I have raised that
18 with administration. And I'll continue to do that.
19 But I just have to say you need to plan on doing it
20 out of the Verde facility at this time.

21 And I understand we're just five, six
22 weeks away. So I'll make a last effort to see if
23 it's possible to have the trial there. Not
24 optimistic. That's the most I can say. But I'll
25 address it again.

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1 MR. LI: Your Honor, to the extent possible,
2 if you make your last gallant try, if you could let
3 us know that either if it did or didn't succeed so
4 that we can -- we need to put down a security
5 deposit and all those sorts of things.

6 THE COURT: I understand. And the witness
7 situation and all that. I understand. No. I'm
8 not going to -- I'll get a definitive answer and
9 let you know as soon as I can.

10 MR. LI: Thank you, Your Honor.

11 THE COURT: Okay. With regard to the request
12 to clarify --

13 MR. LI: Your Honor, if I may raise just one
14 more.

15 THE COURT: Yes. I want to hear what both of
16 you have to bring up first.

17 Mr. Hughes, did you have anything else?

18 MR. HUGHES: No, Your Honor. That was the
19 only "honey-do" item I had right now.

20 MR. LI: Your Honor, this one is actually
21 truly a "honey-do" item that I need to bring up.
22 I'm on a board in Los Angeles on -- basically, a
23 museum board at the Getty. And there is a branch
24 of the Getty called the "Conservation Institute,"
25 the "Getty Conservation Institute." And they,

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1 essentially, restore and teach people how to
2 restore ancient art sites all over the world from
3 Italy to -- you know -- China to Egypt. They're
4 doing King Tut's tomb right now. And I'm on this
5 board of a counsel that supports that particular
6 organization.

7 And we -- they've been working -- I'm
8 sorry. If the Court will bear with me for a few
9 minutes. They've been restoring a site in Far
10 Western China that's, basically, the start of the
11 Silk Road in which about 900-plus years of Buddhist
12 caves ranging from the year probably 500 to the
13 middle ages have been buried in the sands for the
14 last several more hundred years. And these are
15 really remarkable caves. They were featured in the
16 National Geographic recently.

17 And my board is going to China on -- in
18 the middle of May of this year. And we've been
19 committed to do this for some time. And we are now
20 plunking down the money to go. And a trip to China
21 is not cheap.

22 And -- you know -- as I calculate our
23 number of witnesses, the number, the rough rate of
24 how we get through witnesses and all that, it
25 doesn't seem like it's going to be a problem.

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1 Seems like we're going to be able to wrap up this
2 trial -- you know -- considerably before that
3 date. But before I plunk down the money, I was
4 hoping I could ask the Court's indulgence that if
5 the trial actually does run into May, that we get
6 a -- that the Court would consider a two-week
7 recess for the time period that I would like to be
8 in China.

9 You know, I ask the Court -- I understand
10 this is a personal matter. This is not the Court's
11 problem. The state has graciously agreed not to
12 oppose this request. But it's of a fairly
13 important personal and professional consequence to
14 me. And as my wife just reminded me on the drive
15 in to work this morning, I really need to bring
16 this up.

17 So if I -- anyway, I put that out there.

18 THE COURT: Okay. Having had some experience
19 with a long trial, I know that breaks work well for
20 jurors and everyone else when you know they're
21 coming. People need to plan medical appointments
22 and other things. So I'm not troubled by the
23 concept of the time.

24 Although, I think, Mr. Li, I'm encouraged
25 to hear you say that. Because what you've

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1 indicated in terms of trial, it was my thinking
2 this trial would not last into June.

3 MR. LI: Sure.

4 THE COURT: That would put the proposed break
5 right at the end. You can -- you know -- if you
6 can see the timing situation -- you know -- you're
7 right up to closing.

8 And you're saying -- what would the
9 specific dates be? Do you have those yet or is
10 that still --

11 MR. LI: I do. I need to break the calendar
12 out. The current plan is to leave for China on
13 lucky Friday, the 13th, in May and returning on --
14 I don't have my calendar in front of me. But
15 returning on the next Sunday. Let me get my
16 calendar out. Would be returning -- leaving
17 May 13, returning sometime either the 21st or the
18 22nd.

19 THE COURT: I thought you were saying a full
20 two weeks.

21 MR. LI: Yeah. Because of the length of the
22 trip and the potential jet-lag issue -- you know --
23 I'd appreciate a few days on the back end to
24 recover.

25 THE COURT: And, Mr. Hughes, Mr. Li indicated

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1 the state isn't taking a position, I guess, or not
2 opposing.

3 MR. HUGHES: Essentially, yes, Judge.

4 Ms. Polk and I met with Mr. Li a couple weeks ago
5 right before the Christmas holiday, and he brought
6 the concern up. I think at that point he was
7 asking for he thought it would be a week he'd need
8 to continue it for. But we did agree we wouldn't
9 take a position on that request.

10 MR. LI: I'm sorry, Bill. I just meant the
11 trip was a week long. It's just going to be tough
12 to come back from the other side of the world and
13 be fresh and chipper the next morning. But
14 Obviously I'll do whatever the Court needs me to
15 do, including cancelling this.

16 THE COURT: When do you have to have the
17 commitment in, Mr. Li?

18 MR. LI: Well, we've sort of blown the
19 deadline already. And I wanted to talk to the
20 Court first. So -- you know -- the sooner the
21 better. My wife is checking with the person who's
22 in charge of this whole thing to see if we could
23 get a few more -- some more time for us to consider
24 this, for the Court to consider it as well.

25 THE COURT: I think two weeks is a long time.

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1 I understand the importance. But when you look at
2 having a jury assembled for that length of time and
3 planning on six alternates. And things can happen
4 with alternates quickly. The longer the trial
5 goes, the more difficult it becomes.

6 Darn it. Difficult to be presented with
7 this. Obviously I don't want to interfere with
8 something that's of that importance. Then again,
9 the trial certainly takes predominance. And you
10 recognize that. A week. I can certainly say
11 that's something I would accommodate. And I can
12 give the jurors that time. I just would hate to
13 miss a full two weeks.

14 MR. LI: Your Honor, if I may be bold, perhaps
15 it wouldn't be -- look. I'd love two full weeks if
16 it would let me recover and let me sort of get my
17 act together. On the other hand -- you know -- if
18 it could be -- we need to leave on the 13th and if
19 we got back on the 21st or something like that,
20 then if we could start again on the 25th, which
21 would just lose one trial day, which would be the
22 24th, I think.

23 THE COURT: It would be. And so that's what
24 I'm saying. So, essentially, if we can get at
25 least two trial days in, I think --

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1 Mr. Hughes, I think that would make sense
2 with an understanding that trial would start
3 preferably on the 25th, but not later than the
4 26th. I think that can accommodate not have
5 another full week where the jury is away from the
6 trial process.

7 MR. HUGHES: I think that makes sense to the
8 state.

9 THE COURT: Mr. Li, is that something you
10 think you could --

11 MR. LI: Yes, Your Honor. I'm at your mercy
12 and appreciate anything you all will do.

13 THE COURT: So that should -- okay.

14 MR. LI: And I encourage you all to look at
15 this site. It's really remarkable. I'll send a
16 link to Bill.

17 THE COURT: Okay. Go ahead, Mr. Li.

18 MR. LI: I'm just rambling on about it. It's
19 really remarkable.

20 THE COURT: Okay.

21 So at this time, anyway, you say you've
22 already blown the deadline. Really need to firm it
23 up. We'll plan on resuming the trial Thursday, the
24 26th. So we'll have at least two trial days that
25 week.

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1 All right?

2 MR. LI: All right, Your Honor.

3 THE COURT: Okay.

4 MR. LI: And I would I think I would be
5 leaving the trial in Tom's capable hands probably
6 on either the 12th or the 13th. I would be there
7 on the 12th. But if I could be excused and Tom
8 could handle the 13th.

9 THE COURT: Yes. As a matter of fact, that
10 was something I was going to raise. You're going
11 to have maybe three attorneys working on the trial
12 itself?

13 MR. LI: It may be just two at counsel table.
14 We haven't yet figured out exactly how we're going
15 to staff this. But it may just be Tom and I. Truc
16 may be also there. We just haven't finalized that.
17 And I appreciate the Court's indulgence in the last
18 hearing to have four lawyers there popping up and
19 down. We wanted to give Miriam a chance to argue
20 and to -- you know.

21 THE COURT: Sure. It's going to, basically,
22 mean that the week of the 16th would not be a trial
23 week. And trial, then, would resume the 26th.

24 Okay. All right.

25 Anything else?

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1 MR. LI: No, Your Honor. Thank you very much.

2 THE COURT: Okay.

3 With regard to the clarification,

4 Mr. Hughes, did you have a concern with the ruling
5 I'd made and it not being clear?

6 MR. HUGHES: No, Your Honor. The state was --
7 the state read the ruling. Sheila read it. I read
8 it. It seems clear to us. One question that we
9 had -- maybe that's the reason for that, the
10 preoral argument meeting on it. We're wondering
11 what else is it that the defense is looking for.
12 They appear not to be looking for attorney notes.
13 We've already said we're going to give the reports
14 when they're prepared.

15 I'm perplexed as to what else it is. If
16 it's something tangible, Mr. Li can say we want
17 this or this, maybe we can address that and cut to
18 the heart of the matter.

19 THE COURT: Okay. And I should say this: I
20 think I mentioned that I had prepared a rather
21 lengthy ruling, had a draft form of it. And then
22 it appeared the parties had it worked out. I cut
23 it back and may have been a mistake. I did not
24 want to create any confusion.

25 My view is that I wanted full disclosure.

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1 I wanted the opinions of experts disclosed and the
2 reasons for the opinion, the information they
3 considered. All of that needs to be disclosed.
4 And I didn't really want to get into some detailed
5 argument about interpreting the rule and what's a
6 statement, what's a complete report, what's a
7 partial. I wanted full disclosure. And I didn't
8 want to get caught up in what's a statement and
9 what isn't.

10 I think I mentioned that I think there is
11 a difference in the way fact witnesses are treated
12 and the way expert witnesses are treated and under
13 the rules. And I think that's an important
14 distinction.

15 MR. LI: That's the only clarification we're
16 looking for, Your Honor. And I don't think the --
17 I guess what we just wanted to make sure about and
18 respectfully do -- and I think that the state and
19 the defense are hopefully reaching a new phase of
20 cooperation and -- but that we just wanted to make
21 sure that those things are disclosed.

22 We have not -- and I'm not complaining
23 right now. But we just have not yet received all
24 the disclosures. So we just didn't want the ruling
25 to suggest that something less than what the Court

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1 has just described should be disclosed. That is
2 the opinion, the basis, upon which they were made
3 and et cetera.

4 So -- you know -- while we navigate our
5 way to disclosure, we just want to make sure that
6 the rules are clear and that -- you know -- that
7 full disclosure is what the state provides.

8 THE COURT: Okay. Looking at the ruling, I
9 did not deal with 15.1(e). And that was brought up
10 in the request to clarify. And as I look at
11 15.1(e) -- you know -- first of all, I think it
12 somewhat duplicates the obligations that are
13 kicking right at the start for disclosing what an
14 experts has to say and all of that.

15 It does talk about a demand. But when
16 you look at the request for information -- it talks
17 about that. But when you look at the obligations
18 under 15.6, continuing duty to disclose, there is a
19 continuing duty. Both sides need to disclose in
20 accordance with the rule.

21 I've already pointed out that there is a
22 difference in the requirements between the
23 prosecution and the defense and whether or not an
24 expert is going to be a trial witness. That's just
25 in the rules.

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1 But looking at 15.1(e), that to me just
2 isn't very helpful when it talks about upon request
3 any completed written reports, statements and
4 examination notes. I guess completed only applies
5 to written reports as opposed to completed
6 statements. And is an incomplete statement -- I'm
7 sorry -- an incomplete report -- isn't that
8 actually a statement if you read the definition of
9 "statement"? I don't find the rule particularly
10 helpful.

11 What I find helpful is the idea right
12 from the start the way it's set out in 15.1 and
13 15.2. The parties in good faith make the
14 disclosure of the experts' opinions, the reasons
15 for the opinions, what information has been
16 considered. That's the way I see it.

17 Is that clear enough?

18 MR. LI: Yes, Your Honor.

19 THE COURT: And, Mr. Li, though, I'm concerned
20 if you're saying the state has not disclosed to you
21 yet what -- Mr. Ross, I believe, is the name. You
22 don't have anything on that yet?

23 MR. LI: I don't yet have a report from
24 Mr. Ross.

25 THE COURT: You do not?

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1 MR. LI: Do not.

2 THE COURT: Okay. Then I've also said there
3 may be instances where statements have to be
4 disclosed.

5 And, Mr. Hughes, my view is the state
6 can't just wait until a final report is prepared if
7 there is already information. I mean, handing
8 somebody a report the day before trial starts or a
9 day before an expert testifies three weeks into
10 trial, in my view, isn't complying with the
11 disclosure requirements.

12 And it may become necessary to disclose
13 statements if that's what the state has right now
14 to provide the information contemplated under the
15 rules.

16 MR. HUGHES: Your Honor, if I can address
17 that. With the holidays and the vacation schedules
18 of experts, the state and the defense have
19 discussed providing reports. We haven't received
20 any reports from the defense expert either.

21 We have reached an agreement, if you
22 would, that we would provide those by a certain
23 date in January. I'm not sure what the date is. I
24 don't have Ms. Do's email in front of me.

25 But there has been some discussion back
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1 and forth. I think both sides are running into
2 delays getting reports from experts. And it was
3 because of that that we reached the agreement that
4 we would provide the reports to each other by that
5 particular date.

6 MR. LI: Listen, Your Honor, I'm not
7 complaining here. I mean, I just want to note I
8 think we have one expert. And I think the state
9 needs disclosure, appears to be adding additional
10 experts. And -- you know -- we didn't want to
11 bring -- we don't want to have a back and forth
12 about this stuff.

13 THE COURT: Okay. And I didn't want to start
14 that. Believe me.

15 MR. LI: I'm sorry. I interrupted.

16 THE COURT: No. Go ahead. Go ahead.

17 MR. LI: It's just that we are going to
18 move -- if to the extent that we can reach
19 agreement with the state about which experts they
20 really do intend to call and for what purpose,
21 then -- you know -- we'll try to resolve that
22 outside of the Court's -- without involving the
23 Court at all.

24 There are some of these witnesses,
25 Mr. Ross, for instance, who -- you know -- we have

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1 a strong objection to both in terms of his
2 qualifications and just the merit of what these
3 folks are even going to testify about.

4 And -- you know -- that's the reason why
5 we've asked to have the motions on excluding
6 experts to be pushed to -- I forget the date. I
7 think sometime at the end of January.

8 I don't know Mr. Hughes -- I think right
9 now we're probably at about eight or nine state
10 experts, Ten experts, give or take.

11 MR. HUGHES: I don't think we've disclosed
12 anywhere near that many experts.

13 MR. LI: Okay.

14 MR. HUGHES: It may be something that we're
15 going to have to address with the Court's
16 assistance. My understanding, though, would be
17 communications we had up through Christmas when I
18 left on my vacation. I honestly don't know what
19 was said after that in emails.

20 But up to that point my understanding was
21 we did have an agreement that experts would be
22 finally disclosed with their reports to each other
23 by a particular date in the next week or so.

24 MR. LI: Listen, I started off this
25 conversation by saying I'm not complaining. It's

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1 just I don't think it's -- I just wanted to correct
2 the impression that the defense has a load of
3 experts that we're sort of holding back on. We
4 have, I think, one. And the state has a number of
5 experts -- you know --

6 Bill, I think it probably is eight or
7 nine experts if you count the medical experts.

8 MR. HUGHES: If you count the medical experts.
9 But those have been --

10 MR. LI: I understand. In any event, and we
11 have not yet completed the medical expert
12 interviews. We will do that this week.

13 And -- you know -- I just wanted to
14 correct the idea that we have a load of experts.
15 And I don't mean anything more than that. And I
16 will stop talking.

17 THE COURT: Okay.

18 The other matter I wanted to talk about
19 relates to jury questionnaires. And I did get the
20 defense's proposal, a very extensive -- it
21 covers -- I haven't read it in detail. I got it
22 yesterday. I have looked through it. Diane's
23 looked through it. It covers a lot of what
24 normally is covered in a full voir dire.

25 And what I was looking at is targeting

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1 people who are going to be disqualified because of
2 exposure to the case through media and people who
3 have a hardship. And there I say several months.
4 Just not going to work.

5 And then there is another area I wanted
6 to address too. And I've noticed in some jury
7 trials I've had recently there seem to be more
8 people that have a general dissatisfaction with our
9 system for whatever reason. And they also choose
10 to talk about that it seems right in front of the
11 rest of the panel. And that's just another area
12 I'm kind of concerned about.

13 And I wanted to find those people out and
14 then have a meeting with the attorneys and see if
15 there can't be an agreement a number of these
16 people won't even be called to start the voir dire
17 process -- people that fell in those groups.

18 But what I would suggest --

19 Mr. Hughes, I know that the state has
20 indicated an objection to the -- that extensive of
21 a questionnaire. I'd ask that you look through it,
22 though. If you think there are some other areas
23 that would be useful, I wouldn't mind adding it.
24 I'm just saying, Counsel, I do not want to have and
25 I won't have a full voir dire through a

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1 questionnaire. But I'm certainly open to adding
2 some questions.

3 So, Mr. Hughes, have you had a chance to
4 look at it?

5 MR. HUGHES: Your Honor, we are looking
6 through it. And literally as we speak are working
7 on a written response to the motion we hope to have
8 filed sometime this week objecting to the scope of
9 these questions, in a nutshell.

10 And I know we will have a chance,
11 probably will have a chance, to argue the motion.
12 But it seems like many of these questions are more
13 tailored to a capital case. They're without
14 precedent for a case such as this. It seems to
15 be -- as the Court indicated a moment ago, they
16 seem to be trying to conduct a standard voir dire
17 of witnesses through these written questions. And
18 the state has a real concern with that.

19 Certainly we think that there were
20 initial series of questions that were going to go
21 in the written questionnaire that the Court
22 provided to the parties a while back. We think
23 those make sense. There is one or two to add to
24 that. I suppose we probably can reach an agreement
25 to that to find out if these witnesses have been

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1 exposed to media, they're biased against the court
2 system.

3 If we can reach some agreement a day or
4 two days or a week before picking the jury, that's,
5 I think, the idea of these questionnaires, is to
6 avoid calling people in -- hundreds and hundreds of
7 people who will sit around and be stricken for
8 cause by something that would be very clear in
9 those questions.

10 But the other questions, quite a few of
11 them, in the new proposed voir dire seem to go more
12 towards things that would not necessarily be
13 challenges for cause but really help the party
14 gather information about the jurors, which is
15 traditionally done in a question-answer format
16 within the time the Court allows.

17 THE COURT: And I didn't want to have a full
18 argument on this at this point. Mr. Hughes will
19 respond.

20 When will you have your response?

21 MR. HUGHES: Your Honor, we're hoping --
22 Ms. Polk is returning to the office, I think,
23 tomorrow. She's still on her Christmas vacation.
24 The paralegal who is working on the case and myself
25 have been looking at a response and preparing one.

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1 And we're hoping it to have to done by Friday. If
2 not, I can guarantee the Court we'll have it done
3 by Monday next week.

4 THE COURT: Okay. So by the 10th, then.

5 And then, Mr. Li, if you want to say
6 anything else about the questionnaire and your
7 position on it?

8 MR. LI: Yes, Your Honor. I guess I would
9 just say two points. I'm not going to make a big
10 argument on it. The first is this is a relatively
11 unprecedented case, in any event, for all of the
12 various reasons that I think we've already seen.

13 And the second is just the media coverage
14 has been so extensive. And, secondly, this will be
15 a long trial. And the defense's idea was to try to
16 make all of the various processes as efficient as
17 possible. And -- you know -- to the extent that we
18 can get -- you know -- some juror answers to some
19 of the standard questions, some of the questions
20 that would be involved in a traditional voir dire,
21 early and all the parties can review them, I think
22 it will save court time.

23 And that's the aim, is to -- because the
24 parties could look at the various answers, figure
25 out who they need to follow up on and with on what

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1 issues. And rather than doing it -- you know --
2 live and just sort of asking a bunch of questions
3 about random topics, we would be able to be more to
4 focused in our voir dire.

5 And I think -- you know -- the idea of
6 getting as much of it done ahead of time will, in
7 my experience, save days off of the voir dire
8 process. So that was the motivation behind it.

9 And we stand ready to work with the state
10 on any -- you know -- we can phrase the questions
11 any way we want and -- with working with the state.
12 The idea is simply just to make the process more
13 efficient.

14 THE COURT: Well, that was my thought
15 initially. It's just how far to take that. At
16 some point are you going to get into arguments over
17 we need to bring this person in anyway to see --
18 and ask these same things again?

19 MR. LI: Yeah. But, Your Honor --

20 THE COURT: Go ahead.

21 MR. LI: I'm so sorry to interrupt.

22 THE COURT: I know. We're on the phone here,
23 and it just happens. Don't worry about it.

24 MR. LI: It's hard to read the -- where the --
25 but the -- I agree that we don't want this to just

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1 be unending and into every possible nook and
2 cranny. So we can certainly modify it any way the
3 state wants or the Court wants and make it less
4 extensive or less detailed.

5 But it's just been my experience in
6 multiple, month-long trials that there are a lot of
7 topics that need to be discussed in voir dire. And
8 that to the extent we can resolve -- get some of
9 the issues out there for the jurors to consider
10 ahead of time and get their answers on paper so we
11 can get some direction as to what a particular
12 juror is thinking, it will likely save in a trial
13 of this magnitude days off of the voir dire. And
14 it will also have a more pristine voir dire where
15 you don't have the jurors standing up and saying --
16 you know -- basically, all the types of things
17 jurors do in my voir dire where they start making
18 speeches and things.

19 THE COURT: I'm interrupting. That's one of
20 the real points of these questions I've tried to
21 develop here, really target those kinds of issues
22 that people want to talk about the case or the type
23 of case or how they feel about the system. That's
24 what I'm looking for. But -- you know -- the usual
25 questions about -- well, I don't need to go into

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1 that.

2 We're actually running up against some
3 time issues, Counsel. There are other people here
4 in court. I had a double setting here at
5 10:00 o'clock.

6 I did want to say that I had some
7 revisions in the questions I've had, I think, to
8 make things a little more neutral. I won't go into
9 that now.

10 Mr. Hughes, you're going to respond by
11 Monday. What I'll do, if we need to have further
12 discussion, I'll set a telephonic status
13 conference.

14 And, Mr. Li, we'll allow more time to
15 discuss this after I see what the state has to say.

16 MR. LI: Thank you, Your Honor.

17 MR. HUGHES: Thank you, Your Honor.

18 THE COURT: All right. One thing else on the
19 jury questionnaires. I do want them to go out.
20 Because when they go out, I have a better chance or
21 I think there is a better chance of avoiding the
22 anticipated increased publicity that will occur.
23 The admonition can be given when they get the
24 questionnaire, and hopefully that will help.

25 So I've actually considered whether
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1 mailing questionnaires would work. My concern with
2 that is, well, twofold. One, I don't think
3 everybody will respond, self-addressed, stamped
4 envelope or not. And, two, will people get help
5 doing it? Those are my concerns. If you don't
6 actually have the people sitting down -- and I know
7 what the defense has proposed.

8 But if we can just take a minute, I'd
9 like to have your thoughts, both of your ideas, on
10 that briefly.

11 Mr. Hughes.

12 MR. HUGHES: Your Honor, I suppose one concern
13 I have is given the size of the panel that we have
14 to call in, which hopefully we'll be able to winnow
15 down which questions that are asked. I think one
16 great cost to the Court and county to bring all of
17 them in on an extra day or first day to answer
18 questions. And then there is the logistics of the
19 lawyers and the Court being able to read them,
20 process them.

21 THE COURT: Mr. Hughes, excuse me to
22 interrupt. It would be as happened, for example,
23 in the DeMocker case. The jurors were brought in
24 six weeks or so, whatever, ahead of time and were
25 all ready in that window. I'm saying they're

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1 either brought in a month ahead of time in two
2 groups if necessary or there is mailings.

3 So no. It would not be a last-minute
4 thing before. It would be at least four weeks
5 ahead of time. And it has to happen very quickly.

6 MR. HUGHES: Thank you, Judge. I guess I --
7 the point I was trying to get to is if there is a
8 great deal of cost to bring the jurors in. I think
9 when they're sitting in the room, admonition or
10 not, if they're going to talk to someone, they're
11 going to talk to the guy setting them to them. I
12 think adding an admonition in the form of the
13 directive with the questionnaire going out in the
14 mail would be sufficient.

15 I do know some people simply are going to
16 throw it in the trash and say it got lost in the
17 mail. So there is that risk.

18 But I think that the cost to the county
19 and the inconvenience to all of the huge panel
20 coming in just to answer questions -- for those
21 reasons, Judge, I would say the state would prefer
22 to send them out by mail. I know there is a lot of
23 wisdom to having them come in. But, I think, if
24 the person is going to cheat and not follow what
25 the Judge orders as far as taking time to respond,

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1 then we'd want to know that up front.

2 THE COURT: The counter to that, of course, is
3 a judge is there actually telling people you can't
4 do this. That should carry more force than a
5 highlighted bold type.

6 But, Mr. Li, since this isn't the last
7 word, just briefly.

8 MR. LI: Your Honor, I mean, I agree with the
9 Court. I think having people -- face-to-face
10 contact with the Court will impress upon the jurors
11 more a sense of their responsibility and we'll get
12 higher compliance and higher -- a greater amount of
13 information. I would suggest -- support the Court
14 ordering them in.

15 THE COURT: I'm saying my preference is for
16 mailing. It is. But I understand the arguments on
17 both sides. And we will address this after
18 Mr. Hughes responds.

19 And what I'd like to do from here on out
20 is, first of all, confirm that I have set three
21 days aside for pretrial motions, hearing,
22 January 26, 27 and 28. And I'll confirm that.

23 But, Counsel, I really want to have
24 status conferences as needed, telephonic, to
25 discuss the jury issue, questionnaire issue, those

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1 things. That's how I prefer to do that and just
 2 leave it at that. I don't expect that I'm not
 3 going to be discussing the case with you in some
 4 fashion between now and the 26th.

5 But I'm going to confirm those dates, the
 6 trial dates, and deadlines and the adjusted
 7 deadline with regard to experts.

8 Anything else, Mr. Hughes?

9 MR. HUGHES: No, Your Honor. Thank you.

10 THE COURT: Mr. Li?

11 MR. LI: No, Your Honor. Thank you.

12 THE COURT: Thank you. We'll hang up. Bye.

13 (The proceedings concluded.)
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1 STATE OF ARIZONA)
 2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE
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4 I, Mina G. Hunt, do hereby certify that I
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 6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
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 9 herein set forth, and were thereafter reduced to
 10 typewritten form, and that the foregoing
 11 constitutes a true and correct transcript.

12 I further certify that I am not related
 13 to, employed by, nor of counsel for any of the
 14 parties or attorneys herein, nor otherwise
 15 interested in the result of the within action.

16 In witness whereof, I have affixed my
 17 signature this 22nd day of February, 2012.
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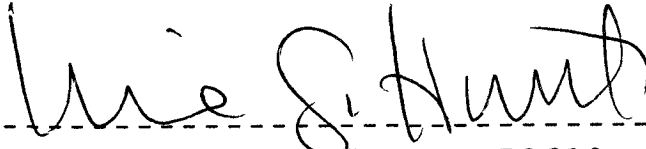
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